vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5117 OF 1996

1. Rasta Peth Education Society & Anr. ... Petitioners

V/s.

State of Maharashtra & Ors. ... Respondents

Mr.N.A. Kulkarni for Petitioners
Mr.V.S. Gokhale, AGP, for Respondent Nos.1 to 4

CORAM: **J.N. PATEL &**
SMT.NISHITA MHATRE, JJ.

DATED: **NOVEMBER 19, 2007**

ORAL JUDGMENT:

. Heard learned Counsel. The Petitioner management was required to approach this Court impugning the decision of the respondent education officer communicated to the petitioner management vide his letter dated 20.8.1996 wherein it was mentioned that as the Deputy Director of Education, Pune Division, Pune has directed that one Mr.Ballal, CA, is entitled to receive salary from January 1995 to July 1996 which amounts to Rs.37182/- and as the same is being paid by the Education Officer, the said amount would be deducted from the non salary grant. According to the petitioner society, they are running certain educational institutions in Pune and one such institution is Abasaheb Atre Night School at Pune of which petitioner No.2 is the headmaster. The dispute relates to the

appointment of Respondent No.5 Shri Sitaram Eknath Ballal who came to be appointed by the petitioner as he was having the required qualification i.e. B.A., B.Ed. and belonged to Scheduled Tribe category and was in regular employment of Alegaonkar High School at Kirkee. It is the case of the petitioner that by communication dated 1.11.1988, Respondent No.2 directed the petitioner that approval of two divisions of 8th and 9th standards was being cancelled for want of sufficient number of students and Respondent No.3 called upon the petitioner by letter dated 7.11.1994 to furnish the particulars of surplus employees in view of closure of the divisions. Accordingly, the petitioner institution terminated the services of Respondent No.5 by notice dated 30.11.1994 which was not challenged by him. Time and again, the respondent insisted upon continuing Respondent No.5 on their roll as if Respondent No.5 was entitled to be continued. The Petitioners have placed on record various correspondence between petitioner management and the officials of the education department. But it appears that the respondent education department did not take into consideration the case of the petitioner and insisted that a sum of Rs.37182/- towards salary of Respondent No.5 for the period from January 1995 to July 1996 was being paid and that the same would be deducted from the non-salary grant to which the petitioner institution was entitled to.

2. It is the contention of the learned counsel for the petitioner that the services of the surplus teachers came to be dispensed with on the directions given by the Education Officer and that as one Ballal was a surplus teacher, his services were terminated and though Mr.Ballal has not challenged the same, the respondents were not justified in paying him salary for the said period as communicated to them by the impugned communication dated 20.8.1996 and therefore it deserves to be quashed and set aside.

3. It is submitted that as this Court had granted interim relief in favour of the petitioner, the respondents were injuncted from deducting the non salary grant to the petitioner school under the impugned order. This Court while dealing with the petition at the stage of admission has also examined the issue and recorded a prima facie finding in the order dated 20.4.2000 i.e., the management had not paid the salary of Ballal for the period from January 1995 to July 1996 because he was declared surplus and his services were terminated. This court has further observed that the provisions of Rule 27 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 (for short, 'MEPS Rules') clearly states that in case of reduction of number of classes at the high school level, the services

of the juniormost teacher in the category of trained graduates shall be terminated and in case there is reduction in the number of classes at the middle school level, then the services of the juniormost teacher in the category of trained undergraduates shall be terminated. In the present case, there was a reduction in the number of classes at the high school level. Then Ballal was the juniormost trained graduate teacher. Therefore, his services were rightly terminated whereas there was an insistence from the education department that the services of Mr.Deshpande, who was a trained undergraduate teacher, ought to have bene terminated.

4. Further, inspite of being served, the education department did not bother to file their return on affidavit so as to justify the impugned order. It is really a matter of concern that though in the facts and circumstances of the case, Respondent No.5 was the aggrieved person and could have challenged his termination on the ground that he cannot be declared surplus claiming seniority over Mr.Deshpande. He accepted the termination order and did not agitate the issue but the Education department held brief for him which resulted in passing the impugned order for which no justification has been placed before this Court by filing appropriate reply.

5. The learned AGP was not in a position to assist the Court as to how the impugned order can be sustained in law. Therefore, we are of the clear view that the impugned order was passed without any justification and it has no sanctity in the eyes of law. This Court therefore, makes it clear that in case the education department has acted upon the impugned order and has disbursed the salary to Mr.Ballal as claimed by it which was sought to be recovered from the petitioner institution, then the said amount of salary should be recovered from the concerned officer's salary/pension if he has retired who was responsible for taking such an erroneous decision with interest @ 12% per annum and be credited in the account of the State Government after following due process of law.

6. With these observations, we allow the petition and quash and set aside the impugned order. Rule is made absolute with costs.

(J.N. PATEL, J.)

(SMT.NISHITA MHATRE, J.)